

London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 20<sup>th</sup> August 2014

**Subject:** Korea House, 257 Burlington Road, KT3 4NE

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2012). Chapter 12 of the guidance is attached as Annex B to this notice.

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### **Useful documents:**

#### **Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

#### **Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

#### **Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

#### **Merton's Statement of Licensing policy**

<http://www.merton.gov.uk/licensing/>

# Annex A

## Determination

The Licensing Sub Committee considered the application Hankook House Limited for "Korean House" at 257 Burlington Road, New Malden, KT3 4NE for a premises licence to permit the retail Sale of Alcohol, provision of Late Night Refreshment and Regulated Entertainment.

The Premises Licence was **granted**, subject to following modification to permitted hours and the conditions proposed by the applicants in their submission, subject to the indicated modification, and additions:

### Retail Sale of Alcohol

12.00 - 23.00 Monday to Thursday,

12.00 - 00.30 Friday and Saturday,

12.00 - 23.00 Sunday

### Film, Live Music, Recorded Music, Dance, Anything of a Similar to Live Music, Recorded Music, or Dance

12.00 – 00.30 Monday to Thursday,

12.00 – 01.30 Friday, Saturday

12.00 - 23.30 Sundays.

### Late Night Refreshment

23.00 – 00.30 Monday to Thursday,

23.00 – 01.30 Friday, Saturday

23.00 - 23.30 Sundays.

### Opening Hours

12.00 – 00.30 Monday to Thursday,

12.00 – 01.30 Friday, Saturday

12.00 - 23.30 Sundays.

### Conditions:

1. The venue will install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the venue is open for licensable activities for a period of 31 days with date timing and stamping. Recordings shall be made available, subject to compliance with Data Protection legislation, to the police or authorised officer from time to time. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public.
2. All deliveries for the premises shall be made between the hours of 08.00 and 18.00 hours.
3. Waste collection from the premises shall not be carried out before 07.30 hours or after 18.00 hours.
4. No external waste disposal or bar management activity which is audible beyond the boundary of the site shall be carried out after 23.00 hours.
5. The volume of recorded/live amplified music will be monitored and controlled at an

acceptable level. Particular attention will be paid to base levels.

6. When necessary external windows and doors to the function rooms will be kept closed other than for entry and exit.
7. Loudspeakers will be positioned effectively to direct/confine sound to the function area.
8. Volume checks shall be carried out at the nearest noise sensitive boundary and a log of actions shall be kept by the licence holder.
9. The supply of alcohol shall be to persons seated at tables only and service will be by waiter/waitress only.
10. Substantial food and non-intoxicating beverages, including drinking water, shall be available throughout the hours permitted for the sale of alcohol.
11. Alcohol may only be ordered and paid for by a member of Korean House.
12. Access to the premises will be restricted to persons working at the premises, members of Korean House and their bona fide guests.
13. Persons may not be admitted to membership without an interval of at least two days between their nomination and their admission.
14. No member may introduce more than 5 guests on any one day
15. All guests must be signed in by a member on entry to the premises.
16. The full terms and conditions of membership of Korean House will be made available to the licensing officer, police licensing officer or other authorised officer on request.
17. An incident book/register shall be maintained to record:
  - All incidents of crime and disorder occurring at the premises;
  - Details of occasions when the police are called to the premises
  - Any noise complaints made by neighboursThis book/register will be available for inspection by a police officer or other authorised officer on request.
18. A notice shall be displayed at the exit to the premises with words to the effect that customers will be asked to depart quietly so as not to disturb nearby residents.
19. A contact telephone number shall be made available to local residents which they can use to report any noise disturbance.
20. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all staff will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification, being a passport or photocard driving licence bearing a holographic mark or other form of identification bearing the customer's photograph, date of birth and the Proof of Age Standards Scheme (or similarly accredited scheme) hologram.
21. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in age restricted sales:
  - Induction training which must be completed and documented prior to the sale of alcohol by the staff member
  - Refresher/reinforcement training at intervals of no more than 6 monthsTraining records will be available for inspection by a police officer on request
22. Persons under the age of 16 must be accompanied by an adult over the age of 18.
23. No persons under the age of 16 will be permitted on the premises after 22.00 hours.

New condition:

24. The DPS, manager and/or door staff shall monitor and manage the customers leaving the premises, so as to avoid noise and disturbance to residents.

**Recommendations:**

- 1) The Licensing Sub-Committee would prefer that any smoking shall take place at the rear of the premises or where there are no noise sensitive premises.
- 2) The Licensing Sub-Committee suggests that the manager and/or door staff shall ask waiting minicabs to switch off their engines whilst they are waiting for customers.

**Reasons**

The Licensing Sub-Committee considered all of the relevant evidence made available to it and in doing so has taken into account the Licensing Act 2003, the Guidance under section 182 of the Licensing Act 2003, its Regulations, case law (including specific consideration of the Luminar Leisure and Somerfield cases in respect of the extent of noise being outside the premises and the validity of conditions dealt with by other legislation respectively), and Merton Council's Licensing Policy.

The reasons for the decision were as follows:

**Reasons**

The Licensing Sub-Committee had to consider the application against all the licensing objectives, taking into account the evidence of objectors, and assurances given by the applicant about their proposed activities:

The Licensing Sub-Committee was satisfied that the conditions imposed were appropriate and proportionate to meet the licensing objectives.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).**

#### **12.Appeals**

12.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

#### **GENERAL**

12.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

12.3 An appeal has to be commenced by the appellant giving of a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

12.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

12.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or

- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

12.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

12.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## **GIVING REASONS FOR DECISIONS**

12.10 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

12.11 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

## **PROVISIONAL STATEMENTS**

12.12 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

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